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BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

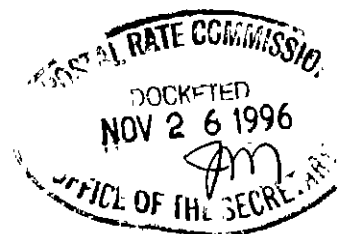
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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Special Services Fees and Classifications) Docket No. MC96-3

OFFICE OF THE CONSUMER ADVOCATE MOTION TO REQUIRE
THE POSTAL SERVICE TO PROVIDE DRAFT IMPLEMENTATION
RULES FOR THE PROPOSED NONRESIDENT BOX FEE AND
A WITNESS TO STAND CROSS-EXAMINATION ON SUCH DRAFT RULES
(November 26, 1996)

The Office of the Consumer Advocate (OCA) hereby moves that the Postal Service be required to provide a set of draft implementation rules for the proposed nonresident post office box fee and a witness knowledgeable about the draft rules who will stand oral cross-examination on them. The need for such draft rules became apparent at a hearing on November 25, 1996, when Postal Service witness Raymond answered questions about rules being considered by "implementation work groups" charged with the duty of "developing proposals that would be contained in a rulemaking, figuring out the practicalities of what the rule would require, [and] evaluating various methods of approaching the proposed rule" for a nonresident box fee.¹

¹ Tr. 8/3212.



During re-direct examination by Postal Service counsel, alarming inconsistencies with the Postal Service's formal request in this proceeding were revealed. For example, the following exchange occurred at the beginning of the re-direct examination:

Q. [Mr. Hollies] Is there another name for the non-resident surcharge or fee that is being touted as a better term?

A. [Mr. Raymond] I think the term was alternative service fee. It eliminated the use of the word "resident."

T. 8/3298.

The Request of the Postal Service for a Recommended Decision on Special Service Changes, Attachment B at 5-6, n. 1, June 7, 1996 (emphasis added), contains the Postal Service's formal proposal for a change to the Special Services schedule for post office boxes:

In addition to the fees specified, all customers will be subject to an additional semi-annual \$18.00 *nonresident* fee per box . . . unless they receive, pursuant to postal regulations, an exemption based upon proof of local *residency*.

The Postal Service is now stating that it may be prepared to modify, either formally or informally (by implementation rules), the proposal that has been under consideration for, lo, these five months. The proceeding is now in its final stage—rebuttal testimony is due to be filed in approximately ten days

and the filing of briefs soon follows. It is a violation of the participants' due process rights under 39 U.S.C. § 3624(a) and 5 U.S.C. §§ 556 and 557 to be faced with possible changes in the Postal Service's case so late in the proceeding. Indeed, witness Raymond indicated that the details of the nonresident fee, as they are now understood, could be subject to alteration up to the time that a recommended decision by the Commission is issued, e.g.,

Q. [Mr. Hollies] Do your comments today reflect the current thinking or the final thinking of the Postal Service on implementation?

A. [Witness Raymond] It is the current thinking of the Postal Service on implementation.

Tr. 8/3299 (emphasis added); and:

Q. Has there been a final decision, even final to the point of that which appears in the status report regarding how long, for example, somebody must stay at their second home in order to qualify as a resident?

A. No. Such details have not been worked out as yet. . . .

Q. Do your comments today reflect the current thinking or the final thinking of the Postal Service on implementation?

A. It is the current thinking of the Postal Service on implementation.

During re-cross examination, witness Raymond reaffirmed the inchoate state of the Postal Service's development of the implementation rules:

In answering your question -- and I hope in answering all questions at that point -- I attempted to reflect current thinking on the implementation team, by no means prejudice the final outcome of our process by saying, "here is how it is going to be definitely or here is how it is not going to be."

Tr. 8/3307, lines 5-10.

Later, witness Raymond added:

We would really like to have our thoughts and decisions fairly articulated in writing at the time the Commission comes back with its decision. Sometime after the first of the year, I guess.

Tr. 8/3313, lines 3-6.

OCA submits that releasing preliminary formulations of the implementation rules so late in the proceeding—"[s]ometime after the first of the year"—is highly prejudicial to participant and Commission interests. Witness Raymond seemed to believe that it was necessary to have a relatively well developed set of rules available only after the recommended decision was issued:

We will have to publish a proposed rule, of course, subsequent to the Commission's rendering a recommended decision. We will have to make these decisions and form that between now and then. I couldn't give you an exact date.

Tr. 8/3311.

As a matter of logic, it is well understood that the final implementation rules, based on the Commission's recommended decision, cannot be finalized until the decision is, in fact,

issued. However, the time for development of a draft set of implementation rules reflecting the Postal Service's Request for a nonresident fee proposal and supporting testimony is long overdue. The indication that rules are now under consideration by the implementation work groups which may be inconsistent with the Request is of great concern.

The Postal Service should now be required to file a draft set of implementation rules reflecting its Request for a Recommended Decision and the testimony of Postal Service witnesses underlying the Request. Participants should have access to such a draft well in advance of the time that initial briefs are due (January 7, 1996). In accordance with this reasoning, OCA moves that the Presiding Officer direct the Postal Service to submit draft implementation rules on December 6, 1996, when other rebuttal testimony is due, and to identify a knowledgeable witness who may stand cross-examination on such rules.

Respectfully submitted,

Shelley S. Dreifuss
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Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 3.B(3) of the special rules of practice.

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